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Judgment in Case E-8/23 *Trannel International Limited*

DISTINCTION BETWEEN ADMINISTRATIVE AUTHORISATION SCHEMES AND SERVICES CONCESSIONS IN RELATION TO THE EXCLUSIVE RIGHT TO OFFER HORSE RACE BETTING

In a judgment delivered today, the Court answered questions referred to it by Oslo District Court (*Oslo tingrett*), concerning the concept of a service concession contract in relation to Articles 5(1)(b) and 10(1) of Directive 2014/23/EU on the award of concession contracts (“the Directive”) and administrative authorisations schemes not covered by the Directive.

In the case before the referring court, Trannel International Limited seeks a declaration that the award of an exclusive right to offer horse race betting in Norway, awarded to Stiftelsen Norsk Rikstoto, is ineffective on account of a breach of EEA law, in particular the Directive.

By its request for an advisory opinion, Oslo District Court primarily sought guidance on when an exclusive right for gaming is to be regarded as an administrative authorisation scheme, falling outside the scope of the public procurement rules, and when it must be regarded as an award of a services concession within the meaning of Article 5(1)(b) of the Directive.

The Court found that in order to determine whether an award of an exclusive right to offer horse race betting to a foundation organised in a manner similar to that of Stiftelsen Norsk Rikstoto constitutes a services concession, regard must be had to whether the right is subject to a contract concluded in writing for pecuniary interest between one or more economic operators and one or more contracting authorities, having as its object a concession for services, in return for consideration and to the benefit of the acquiring authority, which is legally binding on both parties and which is legally enforceable. Administrative authorisation schemes, on the other hand, which grant an authorisation to an economic operator, regulate and establish the conditions for the exercise of the activity whilst the economic operator remains free to withdraw from the provision of the service, and cannot be legally enforced, are not within the scope of the Directive.

Further, the Court found that the entry into force of the Directive had not changed the distinction between services concessions and administrative authorisation schemes, and that neither the fact that any profits of the party awarded the exclusive right are controlled by the State through regulations, nor the organisational structure of the entity awarded an exclusive right, is relevant for the assessment of whether the arrangement constitutes a services concession.

Finally, the Court held that it is not of significance for the exception in Article 10(1) of the Directive that national legislation on which the exclusive right is based does not specifically name the holder of the right, or that the foundation that is awarded an exclusive right has also been awarded that right uninterruptedly under previous national legislation.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.